

EXHIBIT 2  
DATE 3-18-2009  
HB HB 614

## Subject

(Effective December 3, 2008)

late

December 2, 2008

The diagram illustrates a two-dimensional lattice structure. It consists of a grid of points connected by horizontal and vertical bonds. A specific path is highlighted with thicker lines, starting from a point on the left and moving towards the right. The diagram is labeled with 'a' for the lattice constant and 'b' for the bond length.

$$\frac{1}{2} = \frac{1}{4} + \frac{1}{4} = \frac{1}{8} + \frac{1}{8} + \frac{1}{8} + \frac{1}{8}$$

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At the same time, my office prosecutes a number of other matters of significance to the Federal government - - most notably, acts criminalized as - felonies by Congress - - which requires us to exercise discretion in the allocation of

prosecutorial resources in the aggregate and with respect to individual cases. We have concluded that the current CVB practice is consuming more resources than we can afford to allocate to it. As the result of extensive discussions this past year on a range of potential options set forth in an earlier memo, I have adopted some changes. If these reforms are fully implemented and successful, it seems likely that no further alterations will be necessary.

## I. CLASS A MISDEMEANORS

Effective immediately, misdemeanors with a potential of a year in custody -- Class A misdemeanors -- shall be charged only by formal Information after our office has received a litigation report from the agency. Any Class A misdemeanor charged by violation notice will be dismissed -- on our motion or automatically by the Magistrate Judge. The reason for this change is that the Magistrate Judges do not want to accept a guilty plea on an agency drafted citation charging a Class A misdemeanor without prosecutorial review. Class A misdemeanors carry consequences -- such as a permanent criminal record -- which petty offenses do not carry. Therefore, from now on, before a Class A misdemeanor may be charged, a complete investigative report and an additional copy of it must be forwarded to Sally Frank in the U.S. Attorney's Office in Billings. A charging decision will be made and either an information will be filed or a declination letter will be forwarded to the referring agency.

## II. DELEGATION OF AUTHORITY TO RESOLVE PETTY OFFENSE TICKETS TO AGENCIES' LAW ENFORCEMENT LEGAL SPECIALIST (LELS)

An agency suggestion now adopted herein was that an agency employee be tasked with contacting ticketed defendants, exploring the possibility of a pre-trial resolution, and preparing the appropriate documents formalizing the agreement. As I indicated in my April memo, much of an AUSA's time is exhausted in trying to find and contact the person ticketed, and resolve a case. This is not a process that requires an attorney and may be handled by an agency representative who is not involved in its law enforcement mission. With respect to individual cases, the LELS should be someone other than the officer who issued the ticket in question.

Therefore, by December 8, 2008, please designate one or more members of your staff to receive training from the U.S. Attorney's Office in the negotiation and resolution of CVB cases. The LELS on your staff will work to resolve all matters in advance of trial. This process, we are hopeful, will save hours of attorney time and will allow Assistant U.S. Attorneys and Special Assistant U.S. Attorneys to continue to provide attorney services on the actual courtroom demands of this practice. Please send the name and contact information for those individuals who

will serve as LEELS for your agencies to Criminal Chief Carl Rostad ([carl.rostad@usdoj.gov](mailto:carl.rostad@usdoj.gov) or (406) 771-2001) and he will set up training in early 2009.

### III. PROCESS WHEN A LAW ENFORCEMENT LEGAL SPECIALIST IS UNABLE TO RESOLVE A MATTER

Attempts to resolve tickets may begin at any time after the issuance of the citation but no later than the date of a defendant's initial appearance before a Magistrate Judge. If your LEELS has not attempted to resolve a ticket before the defendant's initial appearance, it is our expectation that the LEELS will be in court at the time of the initial appearance and prepared to resolve the matter then. If the legal specialist cannot resolve a ticket between the time of its issuance and thirty days after the defendant appears before the Magistrate, we will employ a different procedure than currently in place. Like all other prosecutions undertaken by this office, we will not prosecute a criminal case without a case agency report, an IRCL, and a VALI from the referring law enforcement agency. As is the case with all other matters referred for prosecution, the process will allow an AUSA to conduct an independent review of the case for sufficiency of proof and federal interest and determine whether the case should be prosecuted or declined. If a determination to proceed is made, the AUSA will open a case in our electronic case management system and file an information setting forth the charge and potential penalty. The information may charge a different violation and penalty than that noted on the ticket issued by the law enforcement officer depending on the AUSA's independent assessment of the case. Obviously, if the case does not appear to meet the standards of significant federal interest, or if the evidence cannot likely result in conviction, an information will not be filed and no further action will be taken by the U.S. Attorney's Office.

#### A. Step-by-Step

This is how we envision this new process:

1. A citation is issued with a \$ 500 bond and an appearance date of July 1. Copies of the ticket go to the Court and the law enforcement legal specialist(s) (LEELS) in your office assigned to the resolution of CVB matters.

If the bond amount is not remitted to CVB before the defendant's initial court appearance, the law enforcement legal specialist shall make attempts to resolve the ticket by communicating with the defendant in advance of the

court hearing and/or at the time of the court hearing.<sup>1</sup> Except in those situations described in the footnote, it is expected that the LELS will communicate with the defendant and attempt to settle the case no later than the day the defendant appears before the Magistrate. In order to do so, the LELS will review the facts, contact the defendant, and attempt to resolve the case without trial by arranging for a payment plan, a lower fine, dismissal of certain tickets in exchange for pleas to others, etc.

## 2. Either

a) the ticket is paid directly to CVB; or

b) the cited person appears before a Magistrate Judge, pleads Not Guilty, and is given a trial date.

3. The law enforcement legal specialist has another thirty days from the date of the defendant's appearance before the Magistrate to resolve the matter. Unless the agency advises the U.S. Attorney's Office not to dismiss the CVB ticket because an agreement has been reached, a motion to dismiss will be filed thirty-one days after the defendant's appearance before the Magistrate.

So, either:

a) within thirty days after the defendant's appearance before the Magistrate, an agreement will be reached and filed with the Court and the trial will be vacated; or

b) no agreement will be reached within thirty days of the court appearance and the file, together with a complete investigative report, IRCL, and VALI, will be forwarded to the Sally Frank, the Assistant to the U.S. Attorney, in Billings, within ninety days of the dismissal.

The investigative report must contain materials required by Rule 16 of the Federal Rules of Criminal Procedure including statements of witnesses and defendants, photographs, documents, admissions, etc. If the file is referred without a complete investigative report, or with one that is inadequate to fully prepare for trial, the case will be declined for prosecution and an information will not be filed.

<sup>4</sup>We recognize that there are individual cases in which an agency does not wish to negotiate with the defendant and believes any pre-trial compromise would be unacceptable. In those instances, no attempts to negotiate a resolution are required, but the procedure outlined Section III(A)(3)(b) should be followed at any earlier stage so that the ticket may be dismissed before the Defendant's initial appearance.

1. After receipt of the prosecution referral, an IRCL, and a VALJ, the Criminal Chief or his designee will assign the matter to an AUSA. The AUSA will either file an information charging the defendant previously ticketed by the agency or decline to prosecute the matter and communicate the decision in a letter to the referring agency.

#### B. Glacier Park

Trials for offenses committed in Glacier Park will be held in West Glacier before U.S. Magistrate Judge Strong. It will be the rare circumstance that trials for Glacier Park offenses will be held in Great Falls. Given the process outlined above, unresolved tickets issued by law enforcement personnel in Glacier may result in trials the following summer.

#### IV. CONCLUSION

If AUSA hours dedicated to the prosecution of CVB citations continue to rise, it is likely that the U.S. Attorney's Office will need to revisit some of the options in my earlier memo. Therefore, we will be grateful for your best efforts to fully implement the process changes set forth above.

If you have any questions, do not hesitate to contact me.

cc: Ed Corrigan, Flathead Co. Attorney  
Kurt Alme, First Assistant U.S. Attorney  
Carl Rostad, Criminal Chief  
Kris McLean, Deputy Criminal Chief  
Jessica Fehr, Assistant U.S. Attorney  
Rebekah French, Assistant U.S. Attorney  
Tim Racicot, Assistant U.S. Attorney  
Sally Frank, Assistant to the U.S. Attorney